

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

JAMES CORBELL, an individual, **DYLANA LEWIS**, an individual, **JAMES GRINER**, an individual, **JOHN GRIMSBO**, an individual, **KEVIN THOMPSON**, an individual,

Plaintiffs,

v.

CITY OF PORTLAND, an Oregon municipality, **TY KOVATCH**, an individual, **RON DRATH**, an individual,

Defendants.

Case No.

COMPLAINT

1. Retaliation Under ORS 659A.199 and ORS 659A.203 [Reporting Unlawful or Wasteful Practices]
2. Retaliation Under ORS 659A.183 [Use of Family Medical Leave]
3. Discrimination Under ORS 659A.030 [Sexual Harassment/Sex
4. Discrimination]Discrimination Under ORS 659A.112 [Disability/Failure to Accommodate]
5. Discrimination/Retaliation Under ORS 659A.040 [Workers' Compensation Discrimination]
6. Retaliation Under ORS 654.062 [Opposing Unsafe Employment Conditions]

NOT SUBJECT TO MANDATORY
ARBITRATION

Prayer Amount: \$998,500

Filing Fee Pursuant to
ORS 21.160 (1)(c): \$560

JURY TRIAL DEMANDED

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1 Plaintiffs James Corbell ("Corbell"), Dylana Lewis ("Lewis"), James Griner ("Griner"),
2 John Grimsbo ("Grimsbo"), and Kevin Thompson ("Thompson") (collectively "Plaintiffs")
3 respectfully allege as follows:

4 **I. INTRODUCTION**

5 1.

6 The Portland Water Bureau of the City of Portland – Portland's department in charge of
7 ensuring clean water efficiently runs to city residents and businesses – is systematically
8 retaliating against employees who fail to embrace the politically motivated atmosphere of its
9 bosses. The Portland Water Bureau's management willfully places employees in the way of
10 harm, and when employees are invariably injured, employees are routinely terminated. If
11 employees complain and rock the boat about the bureau's wrongful and wasteful practices, they
12 are victimized through harassment and other retaliation. Each of the plaintiffs are or were
13 employees of the Portland Water Bureau and asserted their legal rights in different – but similar
14 – ways, thereby warranting termination or retaliation in the eyes of an insular and ignorant
15 employer and its management. This lawsuit follows the adverse employment actions inflicted
16 upon Plaintiffs by the defendants.

17 **II. THE PARTIES**

18 2.

19
20 Corbell was, at all material times, and currently is an individual residing in Clackamas
21 County, Oregon.

22 3.

23 Lewis was, at all material times, and currently is an individual residing in Multnomah
24 County, Oregon.

1 4.

2 Griner was, at all material times, and currently is an individual residing in Clackamas
3 County, Oregon.

4 5.

5 Grimsbo was, at all material times, and currently is an individual residing in Multnomah
6 County, Oregon.

7 6.

8 Thompson was, at all material times, and currently is an individual residing in Clackamas
9 County, Oregon.

10 7.

11 Corbell, Lewis, Griner, Grimsbo, and Thompson are referenced collectively herein as
12 "Plaintiffs" and "the plaintiffs."

13 8.

14 Defendant City of Portland, and its Portland Water Bureau (together (the "City" or
15 "PWB"), is a municipal corporation of the State of Oregon. The PWB is responsible for the torts
16 of its officers, employees, and agents acting within the scope of their employment or duties.

17 9.

18 Defendant Ty Kovatch ("Kovatch") is an individual residing in, on information and
19 belief, Multnomah County, Oregon. Kovatch, at all material times, acted within the course and
20 scope of his employment and had supervisory authority over Corbell, Griner, Grimsbo, and
21 Thompson.

22 10.

23 Defendant Ron Drath ("Drath") is an individual residing in, on information and belief,
24 Multnomah County, Oregon. Kovatch, at all material times, acted within the course and scope of
25 his employment and had supervisory authority over Lewis.
26

11.

The PWB, Kovatch, and Drath are referenced collectively herein as "Defendants" and "the defendants."

III. FACTUAL ALLEGATIONS COMMON TO MULTIPLE CLAIMS

A. The Portland Water Bureau

12.

The PWB governs and controls a water system that dates back to the early days of Portland in 1895. It is responsible for maintaining and providing drinking water throughout the City, as well as ensuring its high quality, supply, and efficient management. A critical element of the PWB's operations includes the construction and repair of water lines throughout the area. Not only is it important for the PWB's customers be able to drink and use water for consumer purposes, but the water is also necessary for many utilities and public services, like fire protection. The PWB has a budget of almost \$750 million per year.

13.

During the times relevant to this lawsuit, the PWB was managed and directed by Michael Stuhr ("Stuhr"), the longtime Chief Engineer for the PWB prior to becoming its director in 2015. Stuhr is and was responsible for supervising all of the operations of the PWB and its employees and directors. These included departments such as Finance and Support Services, Engineering Services, Operations, Customer Services, and Maintenance and Construction.

14.

The Maintenance and Construction department is responsible for the overall management of PWB's maintenance, construction, and support functions, including repair and maintenance of water distribution, as well as various purchasing, fleet, and apprentice management and programs.

15.

Kovatch joined the PWB in 2012 as its Director of the Maintenance and Construction department. Before joining the PWB, Kovatch had a background in politics, having served as the campaign manager and chief of staff to a prior Portland city commissioner. When that commissioner decided not to run for re-election in 2012, Kovatch leveraged his political connections to obtain his executive role at the PWB, despite having no prior experience working in construction, management, engineering, or water supplies. Kovatch reported directly to Stuhr.

16.

The Customer Services department is directed by Kathryn Koch, who manages customer services for the PWB, including meter reading, meter maintenance and repair, account services, billing and collection, and customer service quality assurance. Koch manages Drath, who in turn is one of the primary supervisors of meter technicians in the Department of Customer Services.

B. PWB's Culture of Corruption and Favoritism

17.

For as long as Kovatch and Koch have worked for the PWB, they have run their departments like their own personal fiefdoms, rewarding those who play the role of sycophant and punishing those who either intentionally or inadvertently cause "trouble" or make them look bad.

18.

When an employee witnesses a chemical spill, for example, that employee would be disciplined for pretextual reasons such as having a "bad attitude." When union steward advocate for the rights of bullied workers, invented slights are made part of the employee's permanent record. When a supervisor commits serial sexual harassment against a female employee, the complaints are ignored because the supervisor is a personal friend.

19.

It was into this environment that Stuhr entered his role as the PBW's boss, and he has apparently done little if anything to change it.

C. PWB Endangers Public and Employee Safety

20.

This toxic environment not only makes work unpleasant for PWB employees, it endangers public and employee safety and health. In March 2018, for example, an employee was instructed to drain a large tank of at least 150 gallons – weighing about a ton – of tack coat (a material used to coat a road before paving) into the PWB's facility yard because the material had become sludgy and unusable. The toxic tack spewed into the yard, creating a giant sludgy mess. Trucks and people traveled through the spill and spread it around the facility.

21.

These PWB employees had no training on how to handle the mess. Rather than taking cleanup and containment measures to ensure it did not seep into the groundwater or otherwise endanger the public – which is required by OSHA – the spill was ignored and on-hand staff did not report the incident. Employees on the ground attempted to cover it up, inappropriately attempting to dispose of some of it through a non-toxic disposal facility. It rained on the spill, as well, causing the tack to spread further and, presumably, to flow into the groundwater. Corbell and Griner learned about the spill and reported it to Kovatch. Despite a mandatory safety inspection of what happened, Kovatch ignored the incident and dismissed its importance.

22.

Kovatch also routinely pushes employees to perform dangerous tasks beyond their training, qualifications, and experiences. For example, many were aware that Kovatch pushed brand-new rookie employees with no heavy equipment experience to operate excavators and

1 other large machines. When these employees reported their safety concerns, asked to be
2 relieved, or requested training or help, Kovatch would publicly belittle their concerns, tease them
3 mercilessly, and/or push them forward with the tasks.

4 23.

5 Kovatch, ever in his own world, has repeatedly boasted how much he is "loved" by all of
6 his PWB subordinates; he even expressed how he could not understand why he was in sensitivity
7 training.

8 **D. Corbell's Termination: PWB Stamps Out Dissent and Retaliates Against**
9 **Whistleblowers**

10 1. Corbell's Background at the City

11 24.

12 The City hired Corbell full time as a Utility Worker 2 at the Portland Bureau of
13 Transportation in March 2003. Within a few months he was upgraded to an AEO 1 position and
14 became crew leader. He was again promoted in 2005 and, in 2012, was promoted to CEO.
15 While working with the Portland Water Bureau, Corbell has served as a CDL instructor, a safety
16 committee member, and as a CEO trainer.

17 2. Corbell Tirelessly Advocates for Employee Rights

18 25.

19 Corbell was a long-standing shop steward advocating for the rights of his co-workers. In
20 that capacity, he worked with management on behalf of his fellow employees to resolve issues
21 and complaints, working the grievance process if needed, and answering co-worker questions.

22 26.

23 Corbell had substantial impact advocating for the rights of PWB employees, and Kovatch
24 despised him for it. Corbell diligently worked with employees who were working "out of class"
25
26

1 (performing responsibilities outside of the scope of their bargained-for jobs), pointing out to
2 Kovatch that he was misusing, overusing, and abusing employees by working them outside of
3 their comfort zone. He also led moves to change job descriptions, for better pay and working
4 conditions, and generally ensured employee rights were honored. Because Kovatch was the
5 primary wrongdoer and did nothing to correct his behavior, Corbell often bypassed him to
6 complain directly to human resources.

7
8 27.

9 In February 2018, for example, Kovatch cruelly mocked one of his subordinates, a
10 manager who was improperly performing other employees' work. A supervisor with a limp was
11 performing heavy equipment work (which he shouldn't have done in the first place); Kovatch
12 publicly ridiculed and humiliated this supervisor. Corbell reported the incident and, along with
13 the chief steward, met with the City's human resources to discuss the incident.

14 28.

15 As another of many examples, Corbell reported the March 2018 chemical spill described
16 above.

17 3. Corbell Subject to Retaliation, Harassment, and Termination

18 29.

19 As a result of Corbell's advocacy and reports of unlawful activity, he was subject to
20 repeated instances of pretextual retaliation. For example, Corbell was informed about the tack
21 coat spill described above by one of the employees present. With no one else acting, he reported
22 the incident up his chain of command and brought it to Kovatch's attention. No action was
23 taken; instead, he was immediately thereafter disciplined for his use of sick leave, even though
24 he used it pursuant to an authorized, pending workers' compensation claim.

1 30.

2 Shortly after this, later in March, management encouraged one of Corbell's co-workers to
3 file a bogus hostile work environment claim against him. At a meeting investigating those false
4 allegations, presided over by Kovatch, Corbell was denied union representation and instructed to
5 cease asking questions and to "be quiet" going forward. Kovatch, of course, preferred to host
6 these types of pseudo-disciplinary meetings without PWB human resource representatives
7 present and without the attendance of union stewards.
8

9 31.

10 Corbell refused to be intimidated and would not submit to Kovatch's demands to abuse
11 his represented employees. As a result, Corbell was subjected to additional false complaints and
12 removed from his normal schedule.

13 32.

14 Later in 2018, running up against constant roadblocks to success at the PWB, Corbell
15 went directly to Stuhr to seek help and protection.

16 33.

17 Despite his best efforts and solid performance, he was terminated at the end of August
18 2018. To further harm Corbell, the City terminated Corbell's insurance rather than extend it for
19 the customary 30 days – something that, on information and belief, is both retaliatory and seldom
20 (if ever) done.
21

22 **E. Lewis Subjected to Harassment and Forced to Work with the Perpetrator**

23 34.

24 Lewis, a relatively new employee and young mother of two, was hired by the PWB in
25 April 2016 as a meter reader. She excelled from the outset of her employment and was promoted
26 to a meter technician in August 2017.

1 35.

2 She has the misfortune, however, of being supervised by Drath. Early on in their
3 supervisory relationship, Drath expressed reluctance to hire or promote women with children
4 because of their perceived lower loyalty to the job. He began calling Lewis "my dirty girl"
5 numerous times which made Lewis feel very uncomfortable and, not surprisingly, dirty. He
6 made crude, sexist jokes about women and seemed to take delight in referring to his female
7 technicians as his "kids" and "problem children."
8

9 36.

10 Lewis was also discouraged from advancing her career. Lewis, for example, applied for
11 the City's cleverly named "SOAKED" program ("Sharing Our Assets and Knowledge for
12 Employee Development"), which helps expand employees' understanding of the PWB's overall
13 operations. She was accepted to the program, but management pressured her to forfeit the
14 opportunity. Lewis asked permission to attend a Women in Trades program; Drath refused to
15 give her time to do so. She asked to attend training through the American Water Works
16 Association; Drath laughed in her face. Lewis has observed that Drath is far more
17 accommodating to male employees who seek to participate in programs like these.
18

19 37.

20 Drath later began to micromanage Lewis' schedule. On June 25, 2018, Lewis had to
21 leave work early to care for her daughter, as many employees do from time to time. When she
22 returned to work the next day, Drath asked personal questions of Lewis, like whether her
23 children's father was "in the picture." He encouraged her to find other sources of care for her
24 children, stating that he needed Lewis to be physically present at work.
25
26

1 38.

2 On July 3, 2018, Lewis finally took her concerns about Drath to PWB's human resources.
3 Human resources scheduled an in-person meeting with Lewis, which required her to be
4 physically present at a facility separate from the PWB's primary one. Drath was immediately
5 suspicious of where she was going, quizzing her about why she was going to a different city
6 building. Lewis told him to contact human resources if he wanted answers.
7

8 39.

9 On July 5, 2018, Drath physically followed her to a work site to watch her physically
10 repair a broken line. Lewis and a co-worker were disturbed by how he was hovering, and were
11 suspicious about his motives, since he had never attempted to watch Lewis work before.
12

13 40.

14 Shortly thereafter, Lewis sought a light duty assignment because of an injury that she had
15 been trying to work through. Instead of attempting to provide her with a light duty assignment,
16 Drath told her to "stop looking for light duty," and indicated that he thought she was faking
17 injury.
18

19 41.

20 The City further retaliated against Lewis by assigning her to work in the PWB's
21 downtown facility performing menial work as a purported accommodation, even though there
22 was far more meaningful work at her own facility, and had to pay a small fortune in fees for
23 parking.
24

25 42.

26 On September 18, 2018, Lewis brought the results of an MRI, which showed that she had
not been misrepresenting the extent of her injury. She was then reassigned temporarily to help
27

1 with PWB's safety fair, where she was temporarily not working under Drath, though he would
2 frequently check in on her.

3 43.

4 Once Lewis was performing her light duty assignment, while performing her assigned
5 responsibilities, she stumbled upon an email from Koch accusing Lewis of mistakes and/or
6 failings in her light duty work. The recipient of the email was warned to "train [Lewis] at your
7 own risk." Lewis followed up with the individual who supposedly complained about Lewis'
8 work; she denied that there was any problem with Lewis' performance in any way.
9

10 44.

11 After all of the stress of these events, Lewis attempted to get help from Stuhr. She was
12 passed off to the deputy director, who met with Lewis and said the meeting was a "safe place"
13 and that the conversation would remain confidential. Lewis informed the deputy director that
14 she did not want to work under Drath any longer. Lewis was informed that the claims against
15 Drath had been substantiated, but that she would have to continue working under his supervision.
16 Lewis reported that she continued to fear retaliation from Drath and Koch.

17 45.

18 During a meeting a week or so later, the deputy director told Lewis that she had disclosed
19 their confidential conversation to Koch.
20

21 46.

22 Lewis then sought help from the PWB's human resource department, and disclosed she
23 was afraid of continuing her current assignment, particularly with Drath. She was told that the
24 only solution they could offer was to seek *therapy* and a new job. Lewis has applied for many,
25 many positions within the City, including with customer service. For a customer service
26 position, for example, she had three interviews and has not been offered a job, even though she

1 was far more qualified than the white men who received the positions – even though Lewis had
2 even *trained* those men.

3 47.

4 Drath has acted erratically and suspiciously towards Lewis, as well. In November 2018,
5 for example, Drath created a false story for why Lewis needed a new GPS unit in her truck, even
6 though it worked fine. Koch later expressed that Drath wanted to know more about Lewis'
7 whereabouts. Drath and Lewis' lead have been watching Lewis very closely, and making her
8 justify her pre-work stretching, which she does to prevent further injury. Rules were later
9 initiated to reduce Lewis' ability to do this simple act.
10

11 48.

12 Drath has even made light of the City's supposed prohibition sexual harassment and
13 general harassment during an annual PWB meeting while giggling and belittling the exercise.
14 Lewis was ironically forced to sit through Drath explaining policies that he himself did not
15 follow and did not respect.

16 **F. Griner Witnesses Further Impropriety and is Harassed at Work**

17 1. Griner's Success at the PWB and Integral Work in Safety

18 49.

19 Griner has been a loyal employee of the PWB since April 1999. He rose from the ranks
20 from his original position as a Utility Worker II to his current position as a Management Analyst.
21

22 50.

23 Griner has served in a number of roles for the PWB over time, including as a
24 planner/scheduler, Interim safety officer, and through all of the field positions including
25 construction crew leader/WOM. His vast institutional knowledge along with his recognized
26 industry experience make him an indispensable employee for Kovatch when certain types of

projects need be completed. Griner's responsibilities as a Management Analyst have always been unclear (he has repeatedly asked for a job description) but, essentially, he serves at the whim of Kovatch to complete various projects in the safety division of the PWB. Griner's role made him privy to many of the PWB's failings under Kovatch's leadership.

2. Griner Witnesses and Experiences Repeated Mismanagement

51.

When Griner worked as a planner and scheduler, for example, he was one of the PWB employees in charge of the Computerized Maintenance Management System (the "CMMS"), a database that tracked, among other things, work assignments and allotments of bureau resources. The database metrics were tightly monitored by Kovatch, and Griner witnessed him manipulating numbers to improve his perceived success. Griner saw Kovatch do these sorts of manipulative processes time and again in this and other areas of his management. Appearance of success was his sole concern. When questioned, Kovatch would dismiss Griner's concerns and blithely command that it be done his way, which was always (at least in his eyes) the "right way," regardless of the deceptive results.

52.

Griner also witnessed the PWB's complete dereliction of duty when it came to managing and supervising compliance with health and safety regulations, including those mandated by Oregon's Department of Environmental Quality, the U.S. Environmental Protection Agency, and the U.S. Occupational Safety and Health Administration. Kovatch intentionally placed employees into the rule of compliance management and reporting who did not know how to do the job – without someone actually keeping the PWB accountable and in compliance, Kovatch's performance metrics would again be artificially inflated.

1 53.

2 Griner himself requested the opportunity to temporarily step in and assume the role of
3 safety officer. This was a vital position responsible for innumerable regulatory, safety,
4 education, environmental, and customer programs; any vacancy in this role would be
5 irresponsible and dangerous for employees, customers, and the environment.

6 54.

7 The last full-time employee assigned to the entire environmental, safety, and health
8 program for the PWB (responsible for all 700 employees), Contract Services, and the general
9 public, however they may be involved, had provided notice of her intent to resign after Kovatch
10 removed all of the environmental, safety, and health employees covering those duties. This
11 employee warned Kovatch that his cavalier approach to safety was a mortal danger to PWB
12 employees.

13 55.

14 Without an assigned safety officer, all of the responsibilities of the officer would need to
15 be disseminated among numerous management employees. Even without training, the
16 management employees would have unknowingly become responsible for *all* regulatory
17 compliance, education, and experience required in the extremely dangerous industry of
18 underground utility maintenance, repair, and installation. These tasks involve, for example,
19 management of
20

- 21 • lane closures,
- 22 • shoring equipment,
- 23 • traffic planning,
- 24 • bus route detours,
- 25
- 26

1 action, instead waiting to see who else would report the situation. Rather than investigate the
2 scope of the incident, Kovatch instructed Griner not to contact any regulatory agencies. Griner
3 had numerous photos of the incident, but Kovatch did not care. During a meeting of the key
4 witnesses to the situation, Kovatch tried to convince them (though not so much Griner) that it
5 was "okay" to have the toxic material, uncontained and exposed to heavy rains, buried as normal
6 and shouldn't have any problem with the spill.

7
8 60.

9 Griner's attempt to keep the ship afloat was tireless. In October 2016, for example,
10 Griner learned that a PWB electrical contractor committed a serious lockout error under the
11 supervision of a PWB inspector. A journeyman PWB electrician reported the violation to
12 Griner, who contacted the "contract electrical expert" to assess the journeyman's report; Griner
13 quickly learned that numerous code violations had occurred and that the incident could have
14 easily resulted in an electrocution. Griner took the matter directly to Kovatch and Stuhr. The
15 angry response by Kovatch was "what have you done" by drawing attention to the violation, and
16 he ranted that Griner had "gotten [Stuhr] into a tizzy!"

17
18 61.

19 Kovatch thereafter attempted to keep Griner at even more of a distance from potential
20 safety concerns because of his past whistleblowing and otherwise thwart his efforts. In January
21 2017, for example, a water main broke in northeast Portland and flooded an entire street,
22 damaging private property. At the time, Griner was assigned liability claims, which required
23 him to assess liability and provide claims information to those with losses. He went to his direct
24 supervisor and requested business cards for the City's Risk Management group; the supervisor
25 replied that he had none. Griner attempted to go out to the scene, but was summoned back by
26 Kovatch – Griner was told that he should not be involved because he was just going to "elevate

16 – THE COMPLAINT

1 things." To further ostracize Griner from his co-workers, he made this comment in front of
2 numerous PWB supervisors and managers.

3 62.

4 After being repeatedly dissuaded from performing important safety-related concerns,
5 Griner went directly to Stuhr to try to fix the situation, through an emergency transfer if needed.
6 Stuhr promptly told Kovatch, and Griner's work environment deteriorated further. Kovatch kept
7 Griner from responsibilities that would hold him accountable.

8 63.

9 After Griner demonstrated his repeated willingness to try to ensure safety rules and
10 regulations were followed, Kovatch made Griner's work environment intolerable. He was
11 shunned and cut off from all relationships within his department. He is in constant fear for his
12 job. In 2017, Griner was undergoing so much stress that he had to take a medical leave of
13 absence because of Kovatch's abuse. The anxiety became so pronounced that it mimicked
14 symptoms of a heart attack, sending Griner to the emergency room. The PWB sent Kovatch to
15 sensitivity training because of his poor interpersonal skills, and Kovatch publicly mocked the
16 effort and the training.

17
18 **G. Grimsbo is Demoted Due to an Injury and Compelled to Perform the Same**
19 **Functions for Less Pay**

20 64.

21 Grimsbo began working at the PWB in October 1998 as a Utility Worker II was dutifully
22 employed until 2009, at which time he was laid off. He was rehired one year later into a Water
23 Operations Mechanic position. Grimsbo, however, as described in more detail below is one of
24 the many victim of Kovatch's disdain and frustration at employees who disturb routine and
25 metrics by getting injured.

1 65.

2 During his long tenure at the PWB, Grimsbo excelled at his job in all material respects
3 and earned the respect of his supervisors and co-workers.

4 66.

5 In or around 2014, however, Grimsbo suffered a severe on-the-job injury that required
6 extensive leave and rehabilitation. He had three major surgeries over an approximate 8-month
7 period.

8 67.

9 Grimsbo promptly filed a workers' compensation claim, which eventually settled the
10 claims relating to that injury. The claim, however, negatively impacted metrics by which
11 Kovatch was judged, which further irked Kovatch since it reflected poorly on him. Kovatch
12 never forgave Grimsbo for suffering the injury.

13 68.

14 While Grimsbo was still recuperating from his injuries, he began experiencing pressure to
15 return to work. He visited the City's doctor – the doctor reported that he was specifically
16 instructed by the City to answer questions about Grimsbo to misrepresent his recovery – to lie
17 about the state of Grimsbo's injuries and answer questions so Grimsbo's claim would be denied.
18 All of this was *after* Grimsbo had undergone three surgeries – which the doctor had specifically
19 *approved* previously.

20 69.

21 Kovatch then demanded that Grimsbo return even while he was on serious pain
22 medication. Kovatch eventually succeeded in pressuring Grimsbo to return. One of Kovatch's
23 supervisor underlings informed Grimsbo that Kovatch was aware of Grimsbo's heavy medication
24 but he just didn't care.

25 18 – THE COMPLAINT

1 70.

2 When Grimsbo returned to work, Kovatch demoted him from his position to a Utility
3 Worker I. His pay was drastically slashed and his responsibilities, at least at the outset, reduced.
4 The Utility Worker I position was an entry-level one that did not require the special certification
5 or skills of a Water Operations Mechanic.

6 71.

7 Kovatch, however, continued to utilize Grimsbo based on his superior skills – he
8 continued to task Grimsbo with his old responsibilities on an as-needed basis while not
9 compensating him appropriately.

10 72.

11 Kovatch continues to punish Grimsbo for his past perceived transgressions and Grimsbo
12 is still languishing as a Utility Worker I.

13 **H. Thompson Suffers an On-the-Job Injury and is Denied a Reasonable**
14 **Accommodation of His Disabilities**

15 73.

16 Thompson is a long-time employee of the City, having been continuously employed by
17 the City since June 16, 1994. Throughout his long career, he worked his way up from a position
18 as a street cleaning laborer to work in positions as a utility worker, automotive equipment
19 operator, an automotive equipment operator trainer, all the way to his current position as
20 Construction Equipment Operator. Thompson has worked as a trainer, served on the safety
21 committee, and received numerous safety awards and positive performance reviews.

22 74.

23 In 2001, Thompson suffered an on-the-job lower back injury while working with a
24 backhoe on the City's behalf. During the recovery from this injury, the City placed him on "light
25
26

1 duty," during which he was required to (1) sit in the middle of a concrete floor and organize
2 thousands of water meter slips and (2) work in a store room lifting and moving significant
3 weight. Both exacerbated his injury and caused him significant pain.

4 75.

5 Over the years, Thompson learned that many of his fellow City employees had been
6 similarly abused during the interactive process and provided decidedly *unreasonable*
7 accommodations for their physical conditions. Others were subject to baseless employment
8 charges and discipline and others were terminated for pretextual reasons, all to either squeeze out
9 problem employees or punish them for interfering with the "normal" flow of work at the PWB.
10

11 76.

12 Thompson noticed how he too had been treated differently because of his ongoing
13 physical limitations. He was subject to illegitimate discipline, for example, and irrationally
14 denied his rights to correct inaccurate portions of his personnel file or provide him with his
15 medical records.

16 77.

17 In 2017, Thompson seriously aggravated his back condition and became unable to return
18 to work in his normal capacity as an equipment operator. He began medical leave and submitted
19 a workers' compensation claim.
20

21 78.

22 Despite eventually being released to work, Kovatch has refused to provide him with a
23 reasonable accommodation for his disability. Kovatch deemed Thompson unfit to work in any
24 capacity, let alone in a role suitable for his talents, devotion to his job, loyalty to the City, and
25 vast institutional experience. Kovatch has made this decision even though there are qualified
26 roles Thompson could fill even with his injury.

1 79.

2 Rather than provide him with a suitable position or accommodation, Kovatch has allowed
3 Thompson to linger too long on leave, first using all of his sick and vacation time and then
4 placed on indefinite unpaid hiatus.

5 80.

6 Thompson has repeatedly attempted to move Kovatch towards providing him with a
7 reasonable accommodation. During these interactions, Thompson disclosed that he has a mental
8 health condition that has the potential to impact interpersonal relationships. Upon learning this,
9 Kovatch stopped the interactive process and assumed (incorrectly) that Thompson was not
10 suitable for *any* position at the City. Thompson explained that the condition was fully treated
11 and under control, but Kovatch did not relent. Instead, Kovatch is currently encouraging and
12 pushing Thompson to retire – before his full benefits vest – rather than come back to work.

13 81.

14 This refusal to bring Thompson back in any office-related position at the City is an
15 interesting contrast to how Kovatch abuses other injured workers. Thompson had warned
16 management repeatedly that its practice of bringing back injured workers to operate heavy
17 equipment again created a safety and health reason given the particularized nature of the injuries
18 (e.g. spinal) common to heavy equipment operators. Many of these employees worked through
19 their pain, were injured again, and/or had their existing injuries exacerbated. Others were given
20 unsuitable positions with mundane or meaningless work in retaliation for reporting their injuries
21 and using leave.
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25
26

1 82.

2 Kovatch did not care about any of this. In March 2019, after refusing to consider
3 Thompson for other positions, the City provided him with notice of its intent to terminate his
4 employment.

5 **IV. DAMAGES**

6 83.

7
8 As a direct and proximate cause of Defendants' actions, Corbell has suffered and
9 continues to suffer economic damages, including loss of earnings, benefits, job opportunities,
10 and other employment benefits, in an amount continuing to accrue to be determined at trial. This
11 amount, at the time of the filing of this complaint, is estimated to be approximately \$37,000 and
12 continues to accrue at an estimated rate of \$6500 per month.

13 84.

14 As a direct and proximate cause of the defendants' actions, Corbell has suffered
15 emotional distress, mental pain and anguish, embarrassment, loss of dignity, sleeplessness,
16 humiliation, and loss of enjoyment of life. He therefore requests an award of non-economic
17 damages in an amount to be determined at trial, currently estimated to be at least \$200,000.

18 85.

19
20 As a direct and proximate cause of Defendants' actions, Lewis has suffered and continues
21 to suffer economic damages, including loss of earnings, benefits, job opportunities, and other
22 employment benefits, in an amount continuing to accrue to be determined at trial. This amount,
23 at the time of the filing of this complaint, is estimated to be approximately \$3500 and continues
24 to accrue at an estimated rate of \$500 per month.

1 86.

2 As a direct and proximate cause of the defendants' actions, Lewis has suffered emotional
3 distress, mental pain and anguish, embarrassment, loss of dignity, sleeplessness, humiliation, and
4 loss of enjoyment of life. She therefore requests an award of non-economic damages in an
5 amount to be determined at trial, currently estimated to be at least \$75,000.

6 87.

7 As a direct and proximate cause of Defendants' actions, Griner has suffered economic
8 damages, including loss of earnings, benefits, and other employment benefits, in an amount
9 continuing to accrue to be determined at trial. This amount, at the time of the filing of this
10 complaint, is estimated to be approximately \$44,000.

11 88.

12 As a direct and proximate cause of the defendants' actions, Griner has suffered emotional
13 distress, mental pain and anguish, embarrassment, loss of dignity, sleeplessness, humiliation, and
14 loss of enjoyment of life. He therefore requests an award of non-economic damages in an
15 amount to be determined at trial, currently estimated to be at least \$200,000.

16 89.

17 As a direct and proximate cause of Defendants' actions, Grimsbo has suffered and
18 continues to suffer economic damages, including loss of earnings, benefits, job opportunities,
19 and other employment benefits, in an amount continuing to accrue to be determined at trial. This
20 amount, at the time of the filing of this complaint, is estimated to be approximately \$15,000 and
21 continues to accrue at an estimated rate of \$500 per month.

22 90.

23 As a direct and proximate cause of the defendants' actions, Grimsbo has suffered
24 emotional distress, mental pain and anguish, embarrassment, loss of dignity, sleeplessness,
25

1 humiliation, and loss of enjoyment of life. He therefore requests an award of non-economic
2 damages in an amount to be determined at trial, currently estimated to be at least \$200,000.

3 91.

4 As a direct and proximate cause of Defendants' actions, Thompson has suffered and
5 continues to suffer economic damages, including loss of earnings, benefits, job opportunities,
6 and other employment benefits, in an amount continuing to accrue to be determined at trial. This
7 amount, at the time of the filing of this complaint, is estimated to be approximately \$24,000 and
8 continues to accrue at an estimated rate of \$5,400 per month.

9 92.

10 As a direct and proximate cause of the defendants' actions, Thompson has suffered
11 emotional distress, mental pain and anguish, embarrassment, loss of dignity, sleeplessness,
12 humiliation, and loss of enjoyment of life. He therefore requests an award of non-economic
13 damages in an amount to be determined at trial, currently estimated to be at least \$200,000.

14 93.

15 Plaintiffs also seek reasonable attorney fees and costs in an amount to be proven at trial.
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1 **V. CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 **(By All Plaintiffs Against All Defendants)**

4 **(Retaliation Under ORS 659A.199 and ORS 659A.203)**

5 94.

6 Plaintiffs incorporate paragraphs 1 through 93 by reference as though set forth fully
7 herein.

8 95.

9 The City retaliated and/or discriminated against Plaintiffs because they have in good faith
10 reported information that they believed was evidence of a violation of a state or federal law, rule,
11 or regulation, or information that constituted mismanagement, gross waste of funds, abuse of
12 authority, or substantial and specific danger to public health and safety resulting from actions or
13 inactions of the City.

14 96.

15 The City retaliated against Plaintiffs by taking adverse employment actions against them,
16 including termination, harassment, refusing to provide promotions or suitable employment
17 positions, refusing to ensure the safety of the employees, and/or as otherwise alleged above.

18 97.

19 Kovatch and Drath aided, abetted, incited, compelled, or coerced the discrimination and
20 retaliation as alleged above.

21 98.

22 As a direct and proximate result, these plaintiffs suffered damages as described above.

23 99.

24 Plaintiffs seek an award of damages and fees as alleged in paragraphs 83 through 93,
25 including but not limited to attorney fees pursuant to ORS 659A.885.
26

1 **THIRD CLAIM FOR RELIEF**

2 **(By Lewis Against the City and Drath)**

3 **(Discrimination and Retaliation Under ORS 659A.030)**

4 106.

5 Plaintiffs incorporate paragraphs 1 through 105 by reference as though set forth fully
6 herein.

7 107.

8 The City discriminated against Lewis because of her sex.

9 108.

10 The City retaliated against Lewis by taking adverse employment actions against her,
11 including harassment and the refusal to provide promotions, and as otherwise alleged above.

12 109.

13 Drath aided, abetted, incited, compelled, or coerced the discrimination and retaliation as
14 alleged above.

15 110.

16 As a direct and proximate result, these plaintiffs suffered damages as described above.

17 111.

18 Plaintiffs seek an award of damages and fees as alleged in paragraphs 85, 86, and 93,
19 including but not limited to attorney fees pursuant to ORS 659A.885.
20

1 **FOURTH CLAIM FOR RELIEF**

2 **(By Lewis, Griner, Grimsbo, and Thompson Against All Defendants)**

3 **(Discrimination Under ORS 659A.112)**

4 112.

5 Plaintiffs incorporate paragraphs 1 through 111 by reference as though set forth fully
6 herein.

7 113.

8 Lewis, Griner, Grimsbo, and Thompson each had at all material times a disability that
9 substantially limits one or more major life activities.

10 114.

11 The City discriminated against these individuals by failing to provide them with a
12 reasonable accommodation, and/or engage in an interactive process to determine if one was
13 available, and/or by taking adverse employment actions against them, including termination,
14 harassment, refusing to provide promotions or suitable employment positions, refusing to ensure
15 the safety of the employees, and/or as otherwise alleged above.

16 115.

17 Kovatch and Drath aided, abetted, incited, compelled, or coerced the discrimination and
18 retaliation as alleged above.

19 116.

20 As a direct and proximate result, these plaintiffs suffered damages as described above.

21 117.

22 Plaintiffs seek an award of damages and fees as alleged in paragraphs 85 through 93,
23 including but not limited to attorney fees pursuant to ORS 659A.885.
24
25
26

1 **FIFTH CLAIM FOR RELIEF**

2 **(By Grimsbo and Thompson Against the City and Kovatch)**

3 **(Retaliation Under ORS 659A.040)**

4 118.

5 Plaintiffs incorporate paragraphs 1 through 117 by reference as though set forth fully
6 herein.

7 119.

8 Grimsbo and Thompson each suffered work-related injuries and filed workers'
9 compensation claims.

10 120.

11 In retaliation for the injuries and filing workers' compensation claims, and warning about
12 the danger to other employees, these plaintiffs experienced adverse employment actions.

13 121.

14 The City discriminated against these individuals by taking adverse employment actions
15 against them, including termination, harassment, refusing to provide promotions or suitable
16 employment positions, refusing to ensure the safety of the employees, and/or as otherwise
17 alleged above.

18 122.

19 Kovatch and Drath aided, abetted, incited, compelled, or coerced the discrimination and
20 retaliation as alleged above.

21 123.

22 As a direct and proximate result, these plaintiffs suffered damages as described above.

23 124.

24 Plaintiffs seek an award of damages and fees as alleged in paragraphs 89 through 93,
25 including but not limited to attorney fees pursuant to ORS 659A.885.
26

29 – THE COMPLAINT

1 **SIXTH CLAIM FOR RELIEF**

2 **(By Corbell, Griner, and Thompson Against the City and Kovatch)**

3 **(Retaliation Under ORS 654.062)**

4 125.

5 Plaintiffs incorporate paragraphs 1 through 124 by reference as though set forth fully
6 herein.

7 126.

8 Corbell, Griner, and Thompson each raised safety concerns about the manner in which
9 the defendants conducted business. They each complained about and opposed the unsafe
10 environment in which employees worked and were expected to work.

11 127.

12 As a direct and proximate result, these plaintiffs experienced retaliation by the City.

13 128.

14 The City discriminated against these individuals by taking adverse employment actions
15 against them, including termination, harassment, refusing to provide promotions or suitable
16 employment positions, refusing to ensure the safety of the employees, and/or as otherwise
17 alleged above.

18 129.

19 Kovatch aided, abetted, incited, compelled, or coerced the discrimination and retaliation
20 as alleged above.

21 130.

22 As a direct and proximate result, these plaintiffs suffered damages as described above.

23 131.

24 Plaintiffs seek an award of damages and fees as alleged in paragraphs 83, 84, 87, 88, and
25 91 through 93, including but not limited to attorney fees pursuant to ORS 659A.885.
26

30 – THE COMPLAINT

1 **VI. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment as follows:

- 3 1. Economic damages against the defendants as alleged in paragraphs 83, 85, 87, 89,
4 and 91,
5 2. Non-economic damages against the defendants as alleged in paragraphs 84, 86,
6 88, 90, and 92,
7 3. Attorney fees and costs as allowed by law, as well as prejudgment and post-
8 judgment interest, and
9 4. Any other relief the Court deems just and equitable.
10

11 Dated April 2, 2019.

12 **FARGEY LAW PC**

13 By: /s/ Micah D. Fargey

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16 Attorneys for Plaintiffs
17 **James Corbell, Dylana Lewis, James Griner,**
18 **John Grimsbo, and Kevin Thompson**
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